

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**Michael Lewis,  
Petitioner**

**v.**

**William Phillips, Acting Superintendent,  
Green Haven Correctional Facility  
Respondent**

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**03 Civ. 4829 (SCR)(LMS)**

**DECISION AND ORDER**

Petitioner filed this petition for a writ of habeas corpus on or about June 27, 2003. The action was referred to Magistrate Judge Lisa M. Smith on January 20, 2004. On or about March 22, 2005, Magistrate Judge Smith issued her Report & Recommendation. Magistrate Judge Smith recommended that the Petitioner's habeas petition be denied in its entirety. After requesting an extension of time to submit objections, the petitioner submitted objections to the Report & Recommendation on July 25, 2005.<sup>1</sup>

In reviewing a Report and Recommendation, a Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted). *See also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is "not facially erroneous"). However, a district court judge is required to make a de novo determination as to the aspects of the report and recommendation to which objections are made. *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). Here, as mentioned, Petitioner has objected to Judge Smith's recommendation in its entirety.

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<sup>1</sup> By this order, the court grants Petitioner's request for an extension of time to file objections, and considers Petitioner's already filed objections as timely filed.

Having reviewed Judge Smith's thorough and well-reasoned Report and conducted a *de novo* review of each of Petitioner's objections, I accept and adopt the Report in its entirety.


Accordingly, Petitioner's application for a writ of habeas corpus is DENIED.

Moreover, as Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253. *See also* *Lozada v. United States*, 107 F.3d 1011, 1016-17 (2d Cir. 1997), *abrogated on other grounds by* *United States v. Perez*, 129 F.3d 255, 259-60 (2d Cir. 1997). The court certifies pursuant to 28 U.S.C. §1915(a)(3) that any appeal from this order would not be taken in good faith. *See* *Coppedge v. United States*, 369 U.S. 438 (1962).

The Clerk of the Court is directed to CLOSE the case.

It is so ordered.

White Plains, New York  
Dated: September 8, 2005

  
Stephen C. Robinson  
United States District Judge *q/s/tes*